

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own)	
motion regarding the regulatory reviews,)	
revisions, determinations, and/or approvals)	Case No. U-16588
necessary for Wisconsin Electric Power)	
Company to fully comply with Public Acts)	
286 and 295 of 2008)	
ended December 31, 2009)	
_____)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 22, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before April 5, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 16, 2012. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by

action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

March 22, 2012
Lansing, Michigan

STATE OF MICHIGAN
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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On May 26, 2011, the Wisconsin Electric Power Company (WEPCo or Company) filed its application asking the Michigan Public Service Commission (Commission) to conduct a biennial review and to approve its Renewable Energy Plan (REP or Plan). On June 6, 2011, a pre-hearing conference was held before Administrative Law Judge, Mark D. Eyster. Counsel appeared on behalf of WEPCo, the Michigan Public Service Commission staff (Staff), and, jointly, Tilden Mining Company L.C. and Empire Iron Mining Partnership (the Mines). At the pre-hearing conference, intervenor status was granted to the Mines and a schedule was adopted. On July 26, 2011, intervenor status was granted to White Pine Electric Power (White Pine). An evidentiary hearing was conducted on October 21, 2011, at which, the pre-filed testimony of the witnesses was bound into the record and exhibits were admitted into evidence. The parties filed

briefs on November 15, 2011, and reply briefs on December 6, 2011. The record consists of testimony contained in the 109 page transcript and 21 exhibits.

FINDINGS OF FACT

Introduction

WEPCO's current REP was approved by the Commission on May 26, 2009, pursuant to a settlement agreement between WEPCo, Staff, and the Mines. This case is the first biennial review of that REP, conducted pursuant to MCL 460.1021(8).

WEPCo presented the testimony of Thomas P. Lorden, a Senior Project Specialist in WEPCo's Regulatory Affairs and Policy Department. Mr. Lorden provided direct testimony to explain WEPCo's proposed REP and rebuttal testimony in response to the Mines, White Pine, and Staff. He sponsored Exhibits A-1, A-2, and A-3.

The Mines presented the testimony of James W. Collins, a Senior Consultant with Brubaker & Associates, Inc. In his direct testimony, Mr. Collins provided analysis of the REP and an alternative REP proposal. In addition, he provided rebuttal testimony and sponsored Exhibits MIN-1 through MIN-17.

White Pine presented the testimony of Mike Reid, White Pine's General Manager/Chief Operating Officer. Mr. Reid testified about White Pine's operations and a proposal to require WEPCo to negotiate a power purchase agreement (PPA) with White Pine.

Staff presented the testimony of Christine M. Battiste, a Renewable Energy Policy Analyst, and Jesse J. Harlow, a Public Utilities Engineer, both employees in the Commission's Electric Reliability Division. Ms. Battiste presented direct testimony recommending approval of the REP, recommending that WEPCo adopt a competitive bid process to aid in compliance, and recommending that WEPCo investigate whether it can purchase renewable energy (RE) at a lower cost than the projected cost of its 2015 wind. Mr. Harlow provided testimony to recommend approval of WEPCo's modified transfer price and to voice concerns with wind pricing projections. In addition, he provided rebuttal testimony in response to the Mines.

As originally filed on May 26, 2012, WEPCo's proposed REP was different from the 2010 REP in three significant respects. As testified to by WEPCo's Mr. Lorden, at 2 Tr 15:

First, the updated projected revenue requirement for approved RE resources is lower than previously projected. Second, the calculation of a 'transfer price' has been updated and supports a lower projected transfer price for 2012 and beyond compared to the transfer price approved in the 2010 [REP]. Third, the sales and customer forecasts have been updated to reflect the current forecast and the impact of these forecasts on the [REP] is addressed.

Exhibit A-1 included WEPCo's REP Surcharge Summary (with supporting schedules) and detailed WEPCo's REP, as originally filed. 2 Tr 14.

On August 9, 2011, WEPCo filed Mr. Lorden's supplemental testimony and Exhibit A-2. In his supplemental testimony, Mr. Lorden amended the proposed REP and sponsored Exhibit A-2; an updated version of Exhibit A-1. The amendments included a set of changes related to reducing the amount of

2009 existing renewable credits from 51,693 to 46,652 and a set of changes related to an increase in projected generation. 2 Tr 22-23. Mr. Lorden also made changes to the originally filed Transfer Prices by reverting to the 2010 REP Transfer Prices approved in Case No. U-15812. This changed the Transfer Price for the 2010 PPA from \$25.33 to \$50.05 and the Transfer Price for 2012 Wind from \$44.91 to \$80.41. 2 Tr 23. Exh A-1. Exh A-2. In addition, Mr. Lorden increased the amount of new renewable resources from 156 MW to 295 MW to account for an increase in the amount recovered through PSCR factors and an increase in the revenue requirement found on Exhibit A-2, page 1, lines 23 and 24. 2 Tr 23. The result of these changes increased WEPCo's projected 2015 percentage of renewable energy credits from 3.73% to 4.54% and increases the projected cost of the REP by \$33 million. 2 Tr 23, 52.

On September 23, 2011, Mr. Lorden presented rebuttal testimony. Notably, it contained testimony regarding WEPCo's, previously unexpressed, "plans to remove the 2010 PPA currently included in its proposed REP." 2 Tr 26. In addition, he presented a new exhibit, Exhibit A-3.¹

No cross-examination of the witnesses was conducted.

Sales Forecast

WEPCO's updated twenty-year sales forecast is provided in Exhibit A-2, p 7, and predicts a drop in sales across the residential, general secondary and general primary classes. 2 Tr 18. The forecast for average

¹ Exhibit A-3 was admitted into evidence without explanation of its purpose as an exhibit. In the testimony, it is referenced once, in a citation, after testimony regarding the effects removal of the 2010 PPA will have upon interim RPS compliance and REC requirements. See 2 Tr 27.

annual sales for 2012–2014, which is used for 2015 RE compliance, is 279,875 MWh lower than the 2010 forecast. 2 Tr 19. Therefore, the 2015 RE requirement is lowered by 27,987 MWh. 2 Tr 19.

WEPCo provides a twenty-year forecast for Michigan customers in Exh A-2, p 8. “The updated forecast shows higher growth for both the residential and general secondary classes.” 2 Tr 18.

WEPCO’s Excess Generating Capacity

For 2011 through 2015, WEPCo projects average annual excess generating capacity of 888 MW, as shown below and at 2 Tr 40:

TABLE 1
WEPCo Projected Excess Capacity Levels

<u>Description</u>	2011	2012	2013	2014	2015	Avg.
	MW	MW	MW	MW	MW	MW
Total Demand w/Reserves	7,177	6,971	6,632	6,721	6,673	
Total Capacity Resources	<u>7,883</u>	<u>7,788</u>	<u>7,613</u>	<u>7,663</u>	<u>7,664</u>	
Total Excess Capacity	706	817	981	942	992	888

RECs Targets

The RECs required to meet Michigan’s RPS targets for the years 2012 -2015 shown in Exhibit A-1, page 4. To meet the RPS, WEPCo needs 93,116 RECs in 2012, 122,407 in 2013, 151,864 in 2014, and 250,739 in 2015. Exh A-1. Under its Plan, WEPCo expects that meeting the RPS would require it to exceed the retail rate impact limits of the Act. Exh. A-1, 2 Tr 19. Therefore, WEPCo does not plan to meet the Act’s 2015 10% RE standard². 2 Tr 20.

² WEPCO is one of three providers not planning to meet the 10% standard. The other two are the City of Eaton Rapids and the Detroit Public Lighting Department. *Report on the*

Rather, pursuant to its Plan, WEPCo only expects to achieve 4.54%.
2 Tr 20. 2 Tr 23. Exh A-2. p 4, L 21.

Renewable Energy Resources

The proposed REP continues to include pre-Act 295 RE and the Glacier Hills wind farm (2010 Wind) which, at the time of hearing, was expected to be in commercial operation in December, 2011. Exh A-2. 2 Tr 15. In addition, the Plan continues to include a 2010 PPA³. Exh A-2, p 4. Currently, the 2010 PPA contributes 13,584 renewable energy credits (RECs) for 2012, 13,082 RECs for 2013, and 13,251 RECs for 2014. However, WEPCo “plans to remove the 2010 PPA currently included in its proposed REP.” 2 Tr 26. “If the 2010 PPA is removed, [WEPCo] would still meet its 2012 interim [renewable portfolio standards (RPS)] requirement.” 2 Tr 27. However, to meet its 2013 interim RPS requirements, without the 2010 PPA, WEPCo “would need to acquire 15,000 additional RECs”. 2 Tr 27.

The 2013 Wind is now projected as needed in 2015 and is included in the Plan as a WEPCo built project. 2 Tr 15. Exh A-2, p 1. “However, this need may be filled by using a combination of methods, such as acquiring new Company

Implementation of the P.A. 295 Renewable Energy Standard and the Cost-effectiveness of the Energy Standards, Michigan Public Service Commission, p 4 (February 15, 2012).

³ There is dispute between the parties as to whether WEPCo’s updated REP continues to include the 2010 PPA. Exhibit A-3, entitled “Michigan RPS Calculation” was included in WEPCo’s rebuttal testimony and does not include the PPA. However, as noted above, no explanation was provided to explain the purpose of this exhibit. Additionally, in his rebuttal testimony, WEPCo’s witness, Mr. Lorden, testified that WEPCo “plans” to remove the PPA and goes on to state that WEPCo can still meet its 2012 requirements, “if” the PPA is removed. It does not appear that the evidentiary record contains any evidence that affirmatively states WEPCo has removed the 2010 PPA from its Plan; rather the references to its removal appear aspirational. Thus, based on the evidence presented, it is found that WEPCo’s Plan currently includes the PPA.

owned resources, entering into power purchases and pursuing REC purchases.”⁴
2 Tr 15.

As shown in Exhibit A-2, p 6, the 2012 and 2015 wind resources have twenty-year levelized costs of \$80.15 and \$104.89 per MWh, respectively; both lower than Staff’s projection of \$133 per MWh for a new conventional coal-fired facility. Exh A-2. 2 Tr 16. However, the 2015 wind cost “is approximately 10% higher than the average company-owned wind farm price”. 2 Tr 100.

WEPCo has not included any unbundled RECs in its REP. 2 Tr 25. Furthermore, WEPCo has conducted “no evaluation of the purchase of renewable energy credits without the associated renewable energy to comply with the Michigan renewable energy standard[s]”. 2 Tr 43. Exh MIN-7.

WEPCo states that it plans “to meet its system-wide [RPS] requirements on a system-wide basis”. 2 Tr 26, 38-39.⁵

Surcharge

WEPCO’s Plan incorporates the maximum per meter RE surcharge permitted by law. 2 Tr 20, 55. Exh A-2.

Michigan’s Unbundled RECs Market

In Case No. U-16882, Consumers “identified a current competitive unbundled REC Michigan market price of about \$7.00/REC.”
2 Tr 41. Exh MIN-1. “The Detroit Edison Company recently entered into a

⁴ In its Reply Brief, WEPCo asserts that this statement refers to “unbundled RECs”. This interpretation is accepted.

⁵ Given WEPCo’s stated intent to remove the 2010 PPA from the Plan, it would seem WEPCo intends to abandon its system-wide approach. The record appears silent on this issue.

seven-year unbundled REC purchase contract with Boyce Hydro Power, LLC at an average price of \$7.75/REC.” 2 Tr 41. Exh MIN-2. In Exhibit MIN-4, the Mines establish that, for Bay City Electric Light & Power, Chelsea Electric Department, City of St. Louis, Portland Light & Power Board, and Traverse City Light & Power, the average projected price of an unbundled REC, between 2012 and 2029, is \$9.27. 2 Tr 42. Exh MIN-4. Bay City Electric Light & Power, Portland Light & Power Board, and Traverse City Light & Power have projected approximately 405,000 excess RECs that they will have for sale between 2012 and 2029. 2 Tr 42-43. Exh MIN-5.

Transfer Prices

In its original filing, in this docket, WEPCo calculated revised transfer prices for its 2010 PPA, 2012 Wind, and 2015 Wind of \$25.33, \$44.91, and \$49.68 per MWh, respectively. 2 Tr 17. Exh A-1. As described at Tr 2, p 17, the transfer prices were calculated, as follows:

First, the levelized on-peak and off-peak cost over the lifetime of each resource was calculated based on the current projected on-peak and off-peak Locational Marginal Prices shown in Exhibit A-1 (TPL-1), page 5. Second, the weighted levelized transfer price, for each incremental approved RE resource, was calculated by summing the projected percentage of annual wind generation on peak (63.051%) multiplied by the levelized on-peak cost for each incremental resource and projected percentage of annual wind generation off-peak (36.949%) multiplied by the levelized off-peak cost for each incremental resource.

In WEPCo’s supplemental testimony and exhibit, WEPCo proposed higher transfer prices of \$50.05 per MWh, for the 2010 PPA, and \$80.41 per MWh, for the 2012 Wind. 2 Tr 23. Exh A-2. WEPCo explained these changes as resulting

from its position that the “transfer prices approved in the 2010 renewable energy plan (Case No. U-15812) set the floor for the 2010 PPA and the 2012 Wind”. 2 Tr 23. Also, in the supplemental filing, the proposed 2015 Wind transfer price was corrected and decreased slightly to \$48.20 per MWh. 2 Tr 23. Exhibit A-2.

Mines Alternative Renewable Energy Plans

In Exhibit MIN-9, the Mines present an alternative plan that relies upon unbundled RECs, rather than the 2010 PPA and WEPCo owned wind projects. 2 Tr 52. MIN-9. Under the Mines’ Plan, WEPCo could achieve full compliance with the REC standard. 2 Tr 53. MIN-9. The Mines’ witness, Mr. Collins, projects the cost of this alternative to be \$31,199,049; \$75,976,717 less than the cost of WEPCo’s proposed REP. 2 Tr 53. Exh Min-9. Applying WEPCo’s current RE surcharge to the Mines’ alternative plan results in an over-recovery balance of approximately \$5.8 million in 2029. 2 Tr 55. Exh MIN-9. Based on this over-recovery projection, the Mines recommend a reduced RE surcharge for all customer classes. 2 Tr 55.

The Mines propose a second alternative plan that utilizes the 2010 PPA, through 2014, the 2012 Wind, and unbundled RECs. 2 Tr 73. Exh MIN-17. Under this proposal, which omits the 2015 Wind project, WEPCo would achieve compliance with the 10% REC standard at the Mines’ total forecasted cost of \$66,569,686; \$40,606,080 less than the cost projected by WEPCo under its proposed Plan. 2 Tr 73-74. Exh MIN-17.

Under both alternative proposals, the Mines incorporate a transfer price of \$0/MWh for the unbundled RECs. 2 Tr 53, 74.

White Pine's Proposal

White Pine operates a 40 MW coal-fired power plant consisting of two generating units near White Pine, MI. 2 Tr 78. White Pine is planning to convert this facility to a 40 MW biomass plant fueled by forest products, papermill wood residues, railroad ties, and tire chips. 2 Tr 78-79. White Pine anticipates that the biomass plant will be operational in 2013/2014. 2 Tr 79. In 2014, after the expiration of an existing contract for 17.5 MWs, White Pine wishes to produce energy under contract to a new buyer via a PPA. 2 Tr 79.

White Pine's witness, Mr. Reid, testified that, to obtain financing for the conversion to biomass, White Pine needs to have a PPA with a major customer. 2 Tr 83. Without the conversion, he states "there is a very real possibility" that the plant will shut down in 2014, with the resultant loss of approximately 50 jobs. 2 Tr 83.

White Pine argues for a Commission finding that WEPCo's Plan "is not reasonable and prudent absent inclusion of . . . the additional renewable resources that White Pine can provide." 2 Tr 84. Further, White Pine asks the Commission to condition plan approval upon WEPCo's agreement to negotiate with White Pine for inclusion of White Pine's biomass facility in the Plan. 2 Tr 85.

POSITIONS OF THE PARTIES

Introduction

WEPCo notes that its initial REP, approved in Case No. U-15812, identified four sources of RE: the Michigan-allocated shares of its existing RE

sources and pre-Act 295 accumulated RECs; the Michigan-allocated share of the 2010 PPA; the Michigan-allocated share of the 2012 Wind, and; the Michigan-allocated share of the proposed 2013 Wind. WEPCo Init Br, p 1-2.

WEPCo argues that its proposed REP continues the approach adopted in its initial REP, while updating its sales and customer forecasts, deferring the 2013 wind to 2015, replacing the 2010 PPA with Blue Sky/Green Field wind RECs, and maintaining the current surcharge. WEPCo Init Br, p 1-3. As a result of these changes, WEPCo projects RECs will account for 4.54% of its Michigan sales in 2015. WEPCo Init Br, p 9. WEPCo argues that the proposed REP “satisfies the requirements of Act 205” and should be approved. WEPCo Inti Br, p 8.

The Mines find the proposed REP “unreasonable and imprudent” and argue that it contains “three major flaws.” Mines Init Br, p 12. The Mines explain, at Mines Init Br, p 12:

First, WEPCo failed to consider purchasing unbundled RECs in the development of its updated REP. . . . Acquiring unbundled RECs would permit WEPCo to achieve full compliance with Michigan’s renewable energy standard at a lower cost than WEPCo’s proposed REP. . . .

Second, WEPCo’s REP includes [the 2010 PPA] for which WEPCo has never sought, nor obtained, Commission approval. . . . Not only has WEPCo never submitted its PPA for Commission review and approval, the 2010 PPA is, in fact, an ineligible wind energy resource for PA 295 compliance purposes. . . .

Third, WEPCo’s August REP includes the estimated transfer prices from WEPCo’s 2010 REP, approved in Case No. U-15812, as transfer price floors. Using the estimated transfer prices from WEPCo’s 2010 REP as transfer price floors is inconsistent with PA 295, violates the terms of the Case No. U-15812 settlement agreement, and is harmful to ratepayers.

White Pine, noting that the proposed REP fails to meet Michigan's 10% REC standard, recommends that the Commission reject the REP by finding it "not reasonable and prudent absent inclusion of additional . . . renewable resources that White Pine can provide". White Pine Init Br, p 8. White Pine requests Commission approval of a REP "subject to" WEPCo's "agreement to negotiate with White Pine for inclusion of its facility after biomass conversion." White Pine Init Br, p 8.

Staff, concludes that "WEPCo has not fulfilled its obligation to design a renewable energy plan . . . to cost-effectively comply with Michigan's 10% renewable energy standards" and recommends that the Commission reject the REP. Staff Init Br, p 12-13. Staff argues that approval of any future REP should be conditioned upon the "requirement that [WEPCo] establish a competitive bidding process to determine what PPA and/or REC only contracts are available at a lower price than building Company-owned wind projects that contribute to WEPCo's excess capacity." Staff Init Br, p 11.

Unbundled RECs

The Mines argue that the "proposed REP does not comply with PA 295 REC standards" because, inter alia, "WEPCo's plan is predominately structured around rather expensive WEPCo-owned renewable energy generation and renewable energy purchases [and] does not include other lower cost renewable energy options." Mines Rep Br, p 3. The Mines argue that WEPCo is not planning to use unbundled RECs and, therefore, the Plan is unreasonable and imprudent. Mines Init Br, p 13.

Staff seems to concur when it observes that WEPCo's "long-term [REP] consists of only company-owned wind projects located outside of the state at a cost higher than the reported average wind PPAs." Staff Init Br, p 12.

Noting WEPCo's current excess generating capacity, the Mines consider it "patently unreasonable and imprudent" "for WEPCo to plan to build or acquire unnecessary new renewable resources while it is simultaneously planning to sell existing generating resources." Mines Init Br, p 13-15.

The Mines argue that, as shown in Exhibit A-2, WEPCo's average annual REC cost from 2012 through 2019 is \$90.47/REC and that the purchase of unbundled RECs is a less costly option for complying with Michigan's REC standard. Mines Init Br, p 15. To support this argument, the Mines point to Exhibit MIN-4, that shows, for 2012 through 2029, an average unbundled REC forecast price of \$9.27⁶. Mines Init Br, p 16. The Mines argue that [i]f WEPCo had incorporated unbundled RECs into its REP, it would have been able to achieve full compliance with the PA 295 10% REC standard and at a lower cost. Mines Init Br, p 35.

The Mines argue that, currently, "there are significant levels of excess unbundled RECS available for purchase" in Michigan. Mines Init Br, p 17-18. Exh MIN-5. Furthermore, based on MIN-3⁷, the Mines argue that "the REC market in the State of Michigan is growing and more renewable energy

⁶ The average is based on the forecasts of Bay City Electric Light & Power, Chelsea Electric Department, City of St. Louis, Portland Light & Power Board, and Traverse City Light & Power. Exh MIN-4.

⁷ MIN-3 is a copy of the Commission's February 15, 2011, Report on the Implementation of the P.A. 295 Renewable Energy Standard and the Cost-Effectiveness of the Energy Standards (2011 Report).

generators have available RECs to sell into the Michigan marketplace.” Mines Init Br, p 18. Finally, the Mines argue that WEPCo has not even considered the use of unbundled RECS. Mines Init Br, p 19-22.

On this last point, Staff echoes the Mines argument by stating that, “[w]hile [WEPCo] expects to purchase RECs to supplement its [REP] for the 2013 compliance year, [it] has not included or considered REC purchases over the 20 year span of the Plan.” Staff Init Br, p 11.

In response to Staff, WEPCo argues that “this fact does not support rejection of the” REP. WEPCo Rep Br, p 17. WEPCO continues by stating that “[a] present determination of the specific means of filling the 2015 Wind, and the extent to which 2015 Wind will be filled using some combination of self-generation, PPAs, and unbundled RECs, is not necessary for approval of the . . . Plan”. WEPCo Rep Br, p 17.

WEPCo argues that the Mines’ and Staff’s assertions regarding its failure to include RECs in the REP are false. Rather, WEPCo argues, it “does consider the possibility of fulfilling its 2015 Wind requirements using unbundled RECs. WEPCo Rep Br, p 5.

The Mines’ Alternative REPs

The Mines recommend Commission approval of its alternative REP, as shown in Exhibit MIN-9. The Mines explain, at Mines Init Br, p 35, that:

Exhibit MIN-9 . . . uses unbundled RECs beginning in 2012, rather than WEPCo’s unapproved and ineligible 2010 PPA and WEPCo-owned wind generation projects. . . . [U]nder this approach, WEPCo is able to fully comply with the PA 295 10% REC standard and at a lower total cost to Michigan ratepayers. As

shown on line 21 of Exhibit MIN-9 . . . , the total forecasted costs (i.e., revenue requirement) of the Mines' proposed REP for WEPCo is \$31,199,049. An REP for WEPCo based on purchasing unbundled RECs would save Michigan ratepayers \$75,976,717 as compared to WEPCo's proposed REP.

Under the Mines' proposal, WEPCo's current surcharge will result in an over-recovery balance of approximately \$5.8 million in 2029. Mines Init Br, p 38. Therefore, the Mines recommend a reduced surcharge. Mines Init Br, p 38.

WEPCo argues that the Mines' unbundled REC only approach and RE surcharge adjustment recommendations are "without merit". WEPCo Init Br, p 10. WEPCo argues that the Mines ignore the investment made in the 2012 Wind project and the associated expenses to be recovered through Michigan rates. WEPCo Init Br, p 10-11. WEPCo adds that the Mines' recommendation "completely disregards" the fact that WEPCo "provides retail service in Wisconsin and wholesale service" and that WEPCo "plans all of its power supply (including RE) on a system-wide basis". WEPCo Init Br, p 11. WEPCo continues by stating that its initial REP "specifically contemplated meeting Act 295's requirements with a combination of purchased power and future wind projects" and that the Mines "provide no basis to require [WEPCo] to abandon its plan in favor of a drastically different, all unbundled-RECs plan." WEPCo Init Br, p 14.

WEPCo adds that replacing the 2012 wind with unbundled RECs "is unreasonable, contrary to prior Commission orders and contrary to the Company's right to recover its reasonable and prudent investment and costs". WEPCo Rep Br, p 8.

In addition, WEPCo argues that the Mines' proposal "could stress the REC market in the first compliance year (2012)" and that the "availability of unbundled RECs at particular prices and quantities," "during the required time periods, is a matter of the Mines' speculation." WEPCo Rep Br, p 12.

Staff recommends that the Commission reject the Mines' proposal, but, also, recommends that the Commission "not approve . . . any . . . [REP] that does not include evidence that WEPCo considered unbundled REC and renewable energy purchases through competitive bidding over the life of the RE plan 'that could allow the Company to fully comply with the Act at a just and reasonable cost.'" Staff Init Br, p 9-10. Staff notes that "a number" of utilities are purchasing unbundled RECs and argues, at Staff Init Br, p 9 (citations omitted), that:

[R]equiring WEPCo to rely solely on unbundled RECs . . . could stress the RECs market in 2012 "[I]t is hard to predict whether there will be a robust enough REC supply, at any cost, to meet the demand that" the Mines' proposal would place on Michigan's spot REC market.

. . . Instead, a reasonable RE plan should include a diverse portfolio of renewable compliance sources to help "mitigate risk" associated with relying "too heavily on a single renewable compliance source that may not be cost effective or available in the future."

White Pine concurs with Staff on this point and adds that White Pine's "option would clearly improve WEPCO's portfolio by adding diversity, mitigating the utility's risk, and avoiding reliance on a single compliance source." White Pine Rep Br, p 3.

The Mines counter by arguing, at Mines Init Br, p 36-37, that:

At this time, unbundled RECs are available and are a lower cost means for complying with Michigan's REC standard. There is no evidence that an REP for WEPCo that relies on unbundled RECs would unduly stress the unbundled REC market. . . .

If in the future, the market for unbundled RECs changes, then WEPCo can adjust its REP accordingly. . . . There is also nothing that prevents WEPCo from entering into longer-term unbundled REC purchases. Thus, even if the market for unbundled RECs changes . . ., WEPCo can revise[] its plan and may even insulate itself and ratepayers from such market exposure via longer-term contracts for unbundled RECs. . . . Staff's concerns are no basis for refusing to pursue a plan for WEPCo that consists of unbundled RECs.

The Mines add that "[n]either WEPCo nor . . . Staff dispute that the Mine's' plan would permit WEPCo to achieve full compliance with Michigan's renewable energy law." Mines Rep Br, p 4.

The Mines continue by arguing that WEPCo's and Staff's "preference for renewable diversity cannot excuse WEPCo from complying with the REC standards of PA 295", adding that "[n]othing in PA 295 permits an electric provider to fail to comply with the REC standards due to a preference for portfolio diversity." Mines Rep Br, p 4-5. The Mines contend that, "if an electric provider can achieve compliance within the retail rate impact limits, [it] must do so, [and] [u]nbundled RECs are an acceptable means of achieving compliance". Mines Rep Br, p 5.

Staff's Recommendation

As noted, above, Staff argues that WEPCo has failed to meet its obligation to design a REP that cost-effectively complies with Michigan's 10% renewable energy standards and recommends the REP's rejection. Staff argues, at Staff Init Br, p 12 (citations omitted), that:

The Company's long-term RE plan consists of only company-build wind projects located outside of the state at a cost higher than the reported average wind PPAs. Specifically, the Company's RE plan includes a Wind-2015 project. As calculated, the 20-year levelized price is greater than the average company-owned wind farm and greater than the reported average wind PPA:

The 20 year levelized amount of \$104.89 is approximately 10% higher than the average company-owned wind farm price and approximately 6% higher than the average wind PPA price described on page 23 of the Commission's February 15, 2011 Report titled: Report on the Implementation of P.A. 295 Renewable Energy Standard and Cost Effectiveness of the Energy Standards. Additionally the report indicates that the costs are trending downward.

The Company has not justified a \$104.89 levelized cost for company-owned wind generation.⁸

Staff proposes that approval of any future REP should be conditioned upon the "requirement that [WEPCo] establish a competitive bidding process to determine what PPA and/or REC only contracts are available at a lower price than building Company-owned wind projects that contribute to WEPCo's excess capacity." Staff Init Br, p 11. "Staff expects that the Company could more fully comply with the Act if the Company competitively bids renewable energy resources." Staff Init Br, p 12. "Staff recommends that the Commission approve WEPCo's request to continue its renewable energy surcharge and order WEPCo

⁸ The Mines add, at Mines Init Br, p 16, that:

WEPCo's 2015 Wind resource results in a 20-year levelized revenue requirement of . . . \$104.89/MWh. This is considerably higher than WEPCo's identified levelized revenue requirement of \$80.15/MWh associated with its 2012 Wind resource and significantly higher than other recent Commission-approved utility wind projects in Michigan. . . . In August, the Commission gave approval to Detroit Edison to purchase wind produced renewable energy, over a 20-year term, at a contract price up to \$60.90/MWh. Even more recently, the Commission approved a renewable energy contract for Detroit Edison with total levelized costs of \$61-\$64/MWh. This data clearly shows that WEPCo's identified cost associated with its non-Commission approved 2015 Wind resource, in particular, is highly inflated when compared to other renewable resource options available today.

to file a revised RE plan consistent with Staff's recommendations on or before April 1, 2012." Staff Init Br, p 12.

The Mines support Staff's recommendation to require a competitive bidding process and add, at Mines Rep Br, p 11-12, that:

WEPCo, along with its affiliates, have been on a generation building spree since WEPCo announced its "Power the Future" program more than ten years ago. WEPCo plans to build even more new generation citing the need to comply with more recently enacted state renewable energy policies. WEPCo's unreasonable and imprudent REP clearly favors developing additional WEPCo-owned renewable energy projects, which will earn WEPCo a return or profit on its investment, to the exclusion of lower cost alternative sources of renewable energy and credits available to WEPCo to comply with state mandates. The development of a reasonable and prudent REP must take into consideration all available renewable energy options, not just utility-owned sources, to achieve compliance with renewable energy standards in a manner that is consistent with least cost planning principles. WEPCo has proven that [it] will not seriously consider alternative sources to utility-owned renewable energy projects unless ordered to do so. The Commission should require WEPCo to establish a competitive bidding process for acquiring renewable resources, and condition approval of all future REPs on implementing such a program.

In response, WEPCo argues that the Commission "should not condition approval of any updated [REP] upon competitive bidding, but should instead approve the Updated 2011 [REP] as requested by the Company." WEPCo Rep Br, p 16. WEPCo continues by stating that "the Commission has no authority to require [WEPCo] to establish a competitive bidding process", arguing that the "provisions of Act 295 requiring an electric utility to engage in competitive bidding for the acquisition of RECs are limited to specific circumstances, none of which apply here."⁹ WEPCo Rep Br, p 16. WEPCo adds

⁹ WEPCo cites MCL 460.1033(1)(a)(ii) and MCL 460.1033(1)(b), as two sections requiring competitive bidding that do not apply to WEPCo.

that it “will address its efforts to reduce the cost of 2015 Wind in its next [REP] update.” WEPCo Init Br, p 17.

White Pines Proposal

At White Pine Init Br, p 2-3, White Pine argues that:

[Act 295] has a singular goal . . . *to promote* the development of clean energy, *renewable energy*, and energy optimization The Act seeks to achieve this overarching purpose of promoting renewable energy “through the implementation of a clean, renewable, and energy efficient standard that will cost-effectively do *all* of the following:”

(a) Diversify the resources used to reliably meet the energy needs of consumers in this state.

(b) Provide greater energy security through the use of indigenous energy resources available within the state.

(c) Encourage private investment in renewable energy and energy efficiency.

(d) Provide improved air quality and other benefits to energy consumers and citizens of this state.

[WEPCo’s] application utterly fails to show that all of these ends will be met. [I]nstead, [WEPCo’s proposed REP] falls woefully short of achieving the public policy set forth in the “Clean, Renewable, and Efficient Energy Act.”

White Pine continues by arguing that WEPCo “will -- beyond the shadow of a doubt -- fall well short of the 10% requirement of the Act” and “is effectively petitioning the State for an exemption from compliance with the renewable energy requirement.” WEPCo Init Br, p 3. White Pine adds that, because the “revised plan does not meet the requirements of the Act, the Commission really has no alternative but to reject the application. By definition, it cannot be reasonable and prudent. Wisconsin Electric can do better.” White Pine Init Br, p 4.

White Pine states that, because of Act 295, it is planning to convert its 40 MW coal-fired generation plant to a biomass plant for generation in 2013/2014. White Pine Init Br, p 4-5. According to White Pine, the biomass plant will provide jobs in the western Upper Peninsula and “make other important contributions to the public good via, *inter alia*, the payment of taxes and fees”. White Pine Init Br, p 6. White Pine contends that, “[i]n order to obtain the financing for such a conversion from coal to biomass, White Pine will need to have in place a bundled [PPA] with a major customer - and Wisconsin Electric is perfectly suited.” White Pine Init Br, p 7. Thus, White Pine requests Commission approval of a REP “subject to” WEPCo’s “agreement to negotiate with White Pine for inclusion of its facility after biomass conversion.” White Pine Init Br, p 8.

WEPCo dismisses White Pines’ proposal by arguing that there is no “legal basis” to support a Commission order requiring it to negotiate with White Pine. WEPCo Init Br, p 24. Furthermore, WEPCo argues that White Pine has presented no evidence to establish that White Pine can provide RE at prices that would make it reasonable and prudent for Wisconsin Electric to acquire and that would assist WEPCo achieve higher RE compliance levels. WEPCo Rep Br, p 14. Rather, WEPCo believes it “should be allowed to continually review its options with regard to inclusion of RE resources under Act 295 without any restrictions or obligations regarding with whom it might negotiate.” WEPCo Init Br, p 24.

The Mines “do not object to White Pine’s request to negotiate with WEPCo, . . . so long as it is understood that any resulting PPA will be submitted

[to the] Commission for review and approval”. Mines Rep Br, p 12. However, the Mines add that “any Commission encouragement to the parties . . . to negotiate a PPA should not be construed as a Commission mandate to the parties to enter into a PPA under any terms.” Mines Rep Br, p 13.

Addressing White Pine’s proposal, Staff argues, at Staff Init Br, p 10-11, that:

As Act 295 states, the purpose of the Act is to cost-effectively “provide greater energy security through the use of indigenous energy resources available within the state” and to “encourage private investment in renewable energy.” WEPCo’s proposed RE plan is based on Company-owned wind assets that are located outside of Michigan. White Pine has indicated that it has a renewable energy project located in Michigan. It seems reasonable for WEPCo to consider using energy resources available within Michigan as part of its renewable energy generation sources especially if they prove to be cost-effective. Therefore, Staff recommends that the Commission not approve WEPCo’s future RE plans unless WEPCo provides proof of competitively bidding PPAs as a source of fulfilling its obligation to comply with Michigan’s 10% renewable energy standards.

In response to Staff, WEPCo argues, at WEPCo Rep Br, p 18, that:

Nothing in Act 295 requires Wisconsin Electric to purchase RE from projects located in Michigan. Rather, MCL 460.1029 permits a RE system that is the source of RECs to be “located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier” Thus, Act 295 does not support Staff’s position in this regard. RE resources should be evaluated on their merits regardless of the jurisdiction in which they may be located.

2010 PPA

The Mines argue that the 2010 PPA cannot be included in the REP because it has never been approved by the Commission and because it does not meet the location requirements of Act 295. Mines Init Br, p 23-24.

WEPCo acknowledges that the PPA is not eligible for inclusion in the REP and argues that it “plans to remove the 2010 PPA currently included in its proposed REP”. WEPCo Init Br, p 14. Counsel for WEPCo “proposes to do so by replacing the Michigan-allocated share of the RECs from the 2010 PPA with an equivalent amount of Michigan-eligible RECs from its Blue Sky/Green Field wind farm that otherwise would have been allocated to Wisconsin retail sales.” WEPCo Init Br, p 14-15.

The Mines object to this proposal. The Mines argue that WEPCo “has not demonstrated that such a substitution can be made” and has not “provided any cost information about the Blue Sky/Green Field project . . . to determine if that approach would be reasonable in light of other alternatives.” Mines Rep Br, p 7. The Mines add that “merely substituting Blue Sky/Green Field RECs for 2010 PPA RECs would not result in an REP . . . that complies with the REC standards of PA 295.” Mines Rep Br, p 7.

WEPCo warns that, if its proposed substitution is not approved, “the energy and cost of the 2010 PPA will be allocated on a system-wide basis” and Michigan’s portion of the costs will be “recovered through Michigan . . . base rates and PSCR factors”. WEPCo Init Br, p 15. Thus, WEPCo contends that its proposal “avoids charging customers for both the full allocated cost of the 2010 PPA and the cost of purchasing additional RECs.” WEPCo Init Br, p 15.

The Mines reject this argument. As the Mines see it, “WEPCo entered into the 2010 PPA specifically for PA 295 compliance purposes only to realize later that the PPA is not an eligible PA 295 resource. Given WEPCo’s excess

capacity situation, WEPCo clearly does not need the additional resource apart from WEPCo's REP." Mines Rep Br, p 7. Thus, the Mines argue, "WEPCo's decision to enter into the 2010 PPA . . . was unreasonable and imprudent" and "[o]nly reasonably and prudently incurred power supply costs can be recovered from ratepayers under Michigan's power supply law." Mines Rep Br, p 7-8.

In the alternative, WEPCo argues that it will "sell the 2010 PPA credits which are otherwise allocated to Michigan and purchase the same number of RECs from a qualified source." WEPCo Init Br, p 15.

In response, while not endorsing this alternative, the Mines state that "the Commission should support the use of unbundled RECs for WEPCo. Mines Rep Br, p 8.

Finally, WEPCo argues that "[w]ith the removal of the 2010 PPA from the RE Plan, this issue is moot." WEPCo Init Br, p 14.

The Mines do not consider the issue moot. Mines Rep Br, p 6. The Mines consider inclusion of the 2010 PPA in the REP to be "a major flaw that requires the Commission to amend or reject WEPCo's REP." Mines Rep Br, p 6-7. Furthermore, the Mines argue that the Commission needs to address the alternative proposals presented by WEPCo. Mines Rep Br, p 7.

Transfer Price

The Mines object to WEPCo's proposed transfer prices on several grounds, including: that the Act requires transfer prices to be set in reconciliation proceedings, not Plan proceedings; that setting a transfer price as a price floor could undermine the retail rate impact limits of the Act; that retaining the transfer

prices from WEPCo's 2010 REP is inconsistent with the terms of the settlement agreement in Case No. U-15812; that using estimated transfer prices as price floors is harmful to ratepayers, and; that it's premature to set a transfer price for WEPCo's 2015 Wind resource. Mines Init Br, p 26.

WEPCo considers the Mines' claims to be meritless. WEPCo Init Br, p 17. WEPCo argues that "the application in the instant case of the existing Commission approved transfer prices [from] the initial RE Plan is based upon established Commission policy." WEPCO Init Br, p 17. WEPCo argues that "the Commission has considered numerous proposals to lower approved transfer prices in various types of proceedings and consistently rejected them."¹⁰ WEPCo Init Br, p 17.

Likewise, Staff argues that it is proper to continue using the transfer prices established in Case No. U-15812.

More specifically, the Mines argue that, pursuant to MCL 460.1049(3), "the transfer price to be recovered in the PSCR clause must be established in the renewable energy reconciliation proceeding. The transfer prices included in an REP proceeding are simply estimates or placeholders until actual transfer prices are set as part of renewable energy reconciliation cases." Mines Init Br, p 27. The Mines continue, at Mines Init Br, p 28, by arguing that:

The Commission's decisions articulating a transfer price floor policy are wrongly decided. There is nothing in PA 295 that authorizes the Commission to establish transfer prices in a REP proceeding, and then enforce those transfer prices as price floors for the entire 20-year REP. Transfer prices must be estimated in

¹⁰ For support, WEPCo cites the Commission's July 26, 2011, Order in Case No. U-16367 and Case No. U-16034-R, the Commission's August 25, 2009, Order in Case No. U-15806, and the Commissions August 25, 2011, Order in Case No. U-15677-R.

REP proceedings, but then the utility's renewable energy costs must be reconciled to actual costs, including actual transfer prices, in renewable energy reconciliation proceedings.

WEPCo argues that maintaining the previously agreed upon Transfer Prices is proper and that the Mines' contention, that doing so violates MCL 460.1049(3), "is tortured and without merit". WEPCo Init Br, p 20. WEPCo considers any "proposal to establish a new transfer price in this [REP] review" as "inconsistent with the very statutory provision upon which [the Mines rely]". WEPCo Init Br, p 20-21.

Staff states, at Staff Init Br, p 6 (citations omitted), that:

The Mines claim that Act 295 requires that the transfer price be set in the renewable energy reconciliation proceeding and not in a biennial review or amended plan proceeding. Staff agrees that the transfer price should be set in a reconciliation case and recommends that the Commission approve the transfer price in the Company's next renewable energy reconciliation proceeding to be filed in 2012.

The Mines also argue that "setting the transfer price as a price floor undermines the retail rate impact limits in PA 295." Mines Init Br, p 28. As the Mines see it, at Mines Init Br, p 29-30:

Establishing the forecasted transfer prices included in WEPCo's 2010 REP as transfer price floors divorces WEPCo's transfer prices from the actual cost of otherwise available generation. . . . If costs that should have been recovered through the renewable energy surcharge are inappropriately shifted to the PSCR clause . . . , then the retail rate limits imposed on the incremental costs of compliance become meaningless. There must be discipline in determining which costs are to be recovered between the uncapped transfer price included in the PSCR clause and the capped renewable energy surcharge for the statutory retail rate impact limits to have their intended effect. The PA 295 rate impact limits . . . are undermined if a utility is deemed to comply with PA 295 by merely estimating its transfer prices, which can then

never be lowered, without regard to the actual costs of otherwise available energy.

WEPCo responds by arguing, at WEPCo Init Br, p 21, that:

[The Mines'] claim that the Commission policy of setting the transfer price as a "floor" violates the rate aspects of Act 295 is also without merit. . . . Section 45 imposes an express and clear limit only on the RE surcharge. Fixing the transfer price as a "floor" is consistent with the RE surcharge limit and consistent with the standard . . . that the utility recover its reasonable and prudently incurred costs. In contrast, capping the RE surcharge and lowering the transfer price . . . can . . . result in situations where the utility is prohibited from recovering its prudently incurred costs.

Staff echoes WEPCo, by arguing, at Staff Init Br, p 7 (citations omitted), that:

The approved schedule of transfer prices does not undermine the retail rate impact of Act 295 because "[t]he Act does not limit the price per megawatt hour (\$/MWh) that can flow through the PSCR." [T]he "retail rate impact caps apply only to the recovery of the per meter incremental cost of compliance per Section 45(2)." Therefore, the transfer price approved in Case No. U-15812 does not violate the retail rate caps of the Act.

The Mines continue by arguing that it is a violation of the settlement agreement in U-15812 to use the transfer price estimates from that proceeding as "price floors for the entire remaining life of the associated renewable resource." Mines Init Br, p 31.

WEPCo does not believe the continued use of the established transfer prices violates either the settlement agreement or the Commission's Order in Case No. U-15812 and adds, at WEPCo Rep Br, p 10, that:

[T]he Commission's December 4, 2008 Order in Case No. U-15800 specifically provided that, due to the fact that utilities' initial RE plans would precede their RE reconciliation cases, transfer prices would be set in their initial RE plan cases as a floor for the lifecycle of the project. Nowhere did the

Commission's orders in Case No. U-15800 or elsewhere indicate that the transfer prices in the initial RE plans would be mere "estimates that warrant updating" or a "placeholder until actual transfer prices are set as a part of renewable energy reconciliation cases" as the Mines now contend. (Mines' Brief, pages 27-31) All electric utilities, as well as the Mines, were on notice that transfer price floors would be set in the initial RE plans and the effects of same. Nothing in Act 295 prohibits the establishment of a transfer price in an initial RE Plan. The Mines cannot now validly claim to the contrary.

Next, the Mines challenge Commission policy by arguing, at Mines Init Br, p 32, that:

[The] Commission's policy of setting the transfer prices as transfer price floors has a substantial and detrimental effect on the total cost of WEPCo's REP. . . . WEPCo's August REP adopted the estimated transfer prices included in WEPCo's 2010 REP as price floors for its updated plan. The change resulted in a \$33 million, or 45%, increase in the total cost of WEPCo's REP above WEPCo's May REP. This increase . . . is due entirely to the Commission's unlawful and misguided transfer price policy.

The Mines add that "[b]y setting transfer prices as price floors, utilities receive the benefit of increases in market prices for electricity, but ratepayers do not receive the benefit of decreases in market prices for electricity. This asymmetry cannot be found anywhere in PA 295, it harms ratepayers, and it is patently unjust and unreasonable." Mines Init Br, p 33.

WEPCo characterizes this argument as "inaccurate and misguided." WEPCo Rep Br, p 10. Citing the Commission's August 25, 2009, Order in Case No. U-15806-R, WEPCo argues that customers "receive the benefit when contract prices decrease below transfer prices." WEPCo Rep Br, p 10. WEPCo continues by arguing that it has a right to recover the actual costs of its investment in renewable energy sources and that lowering the transfer prices on

existing projects “significantly increases the risk of unrecovered costs.”
WEPCo Rep Br, p 10-11.

Finally, the Mines argue that it is premature to establish a transfer price for the 2015 Wind. Mines Init Br, p 34. The Mines state that the Commission should clarify that any transfer price for the 2015 Wind is merely a “placeholder”, for planning purposes, with the actual transfer price to be established in a RE reconciliation proceeding. Mines Init Br, p 34.

Staff agrees that it is premature to set the transfer price for the 2015 Wind and, like the Mines, believes one should be included in the REP, as only a “placeholder” for planning purposes. Staff Rep Br, p 6. Staff adds that the transfer price for the 2015 wind should be approved in WEPCo’s “next renewable energy reconciliation proceeding to be filed in 2012” or “at the time of project approval by the MPSC or the Wisconsin PSC.” Staff Init Br, p 6. Staff Rep Br, p 4.

In Response, WEPCo argues, at WEPCo Rep Br, p 11-12, that:

Wisconsin Electric will review its options to fill the future RE requirements referred to as “2015 Wind,” but it requests that the Commission set the transfer price for 2015 Wind, subject to it being readdressed as appropriate. The Commission should approve Wisconsin Electric’s requested \$48.20 per MWh transfer price for the 2015 Wind consistent with the Commission’s stated purpose of the setting of transfer prices:

In order to encourage the use of renewable energy the Legislature made a decision to allow the transfer price to be set up-front, with assurance provided to the utility that these amounts would be recoverable.
[June 16, 2011 order in Case No. U-15675-R, page 27]

Approving the requested 2015 Wind transfer price will guide the Company in its renewable acquisition planning to ensure that the

Company can meet its REC portfolio requirements within the parameters of the RE surcharge “cap”.

WEPCo continues by noting that its 2015 Wind project is the deferred 2013 Wind project from its initial REP and that the transfer price for the 2013 Wind project was \$82.72 per MWh. WEPCo Init Br, p 24. WEPCo adds that the “proposed transfer price for the 2015 Wind is \$48.20 per MWh, the lowest transfer price contained in the Updated 2011 RE Plan.” WEPCo Init Br, p 24.

Lower Surcharges

The Mines argue that under their alternative plan, found in Exhibit MIN-9, WEPCo will have a surcharge over-recovery balance of approximately \$5.8 million in 2029. Mines Init Br, p 38. Thus, the Mines argue that the surcharge should be lowered. Mines Init Br, p 39. The Mines consider it “unjust and unreasonable for WEPCo’s current ratepayers to fund a large over-recovery balance in the near term based on speculation about future renewable energy costs.” Mines Init Br, p 39.

WEPCo argues that the Mines’ call for a lower surcharge “has no merit and may cause irreparable harm.” WEPCo Init Br, p 15. As WEPCo sees it, an over-recovery is dependent upon the “unreasonable approach of replacing all RE sources . . . with unbundled RECs” and that this approach must be rejected. WEPCo Init Br, p 15-16.

In response, the Mines note that WEPCo “does not specify the harm or who will endure any such harm.” Mines Rep Br, p 10. In addition, the Mines

argue that, should future costs change, the surcharge “can be adjusted accordingly.” Mines Init Br, p 39.

DISCUSSION

Introduction

This biennial review is conducted pursuant to MCL 460.1021(8), which provides that:

Every 2 years after initial approval of a plan under subsection (5), the commission shall review the plan. The commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 for that year may be joined with the overall plan review in the same contested case hearing. Subject to subsections (6) and (10), after the hearing, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and any proposed amendments to the plan.

MCL 460.1021(6) establishes the standard by which the Commission shall approve or reject an REP, and states:

(6) The commission shall not approve an electric provider’s plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider’s energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system

and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

The parties do not dispute WEPCo's calculations regarding sales forecasts and the number of RECs required to comply with Michigan's RPS. The parties do not dispute WEPCo's analysis of the current market for unbundled RECs and WEPCo's excess generation capacity. These matters are accepted, as found in the Finding of Facts, without additional explanation.

There are several issues upon which the parties disagree. In general, Staff, the Mines, and White Pine all agree that the Plan is unreasonable because of its reliance on expensive self-built wind projects that do not permit WEPCo to meet the Michigan RE standards. The relevant disputed matters are discussed below.

Transfer Prices

Pursuant to the order approving the settlement agreement in Case No. U-15812, the Commission established Transfer Prices of \$50.05 per MWh, for the 2010 PPA, and \$80.41 per MWh, for the 2012 Wind. The Mines object to WEPCO's continued use of these Transfer Prices. The 2015 Wind does not have a currently approved Transfer Price and WEPCo proposes to

establish one at \$48.20 per MWh. The Mines and Staff both object to the establishment of a Transfer Price for the 2015 Wind.

As to the 2010 PPA, the Transfer Price issue is moot because all parties agree that the 2010 PPA is not eligible for inclusion in the Plan and, as explained below, the 2010 PPA shall be removed from the Plan.

As to the 2012 Wind, the Commission has expressed the legal and policy considerations that dictate the treatment of the previously approved Transfer Price. In its July 26, 2011, Order in Case No. U-16034-R et al, p 7-9, the Commission stated:

To commence the programs mandated by Act 295, the Commission issued the December 4, 2008 order in Case No. U-15800 (December 4 order). In that order, the Commission noted that for 2009 the transfer price would be established in the RE plan proceeding (because it would necessarily precede the first RE reconciliation), allowing utilities to “have the transfer price established as a floor for the lifecycle” of provider-owned or provider-procured projects (such as PPAs). December 4 order, p. 25. As the Commission stated, “Doing so ensures that the economic viability of projects that have been committed to will not be jeopardized by transfer prices that change in future years.” *Id.*

In Case No. U-15806 (Detroit Edison’s RE plan case), the Attorney General argued that the Commission lacked authority to establish the transfer price as a floor, and that the transfer price should be subject to increases or decreases that would be reflected in the PSCR mid-year. Noting that, under Section 47(2)(b)(iv) of Act 295 the transfer price will always be the “lower of the amount established by the commission or the actual price paid,” the Commission rejected the Attorney General’s position, stating:

The transfer price is simply a mechanism for estimating and allocating the reasonable and prudent costs of renewable energy between the PSCR and the REP surcharge, whether these costs are associated with renewable self-build projects, projects that are built by third-parties and transferred to the utility, or PPAs. As with any other PPA for electric power, ratepayers pay the reasonable and prudent costs set forth in the contract approved by the

Commission and no more. . . . The primary reason for setting the transfer price schedule as a floor for any project or PPA is to provide the utility with a means of planning its renewables acquisition program to meet its renewable portfolio targets without exceeding the caps on the surcharge defined in Act 295.

August 25, 2009 order in Case No. U-15806, p. 12.

Again, in Case No. U-15675-R (Consumers Energy Company's most recent PSCR reconciliation), the Attorney General argued that the transfer price should be recalculated as part of that proceeding in order to better reflect current pricing, and, in fact, should be substituted with the 2009 locational marginal price. The Commission rejected this view, finding that "In order to encourage the use of renewable energy the Legislature made a decision to allow the transfer price to be set up-front, with assurance provided to the utility that these amounts would be recoverable. . . .

The transfer price . . . may be changed in an RE reconciliation, and the new price will be applied going forward. The RE reconciliation does not constitute a true-up of the transfer price. Rather, the transfer price will be set in each reconciliation . . . on the basis of the elements that are required to be considered by the Commission under Section 47(2)(b)(iv) of Act 295, MCL 460.1047(2)(b)(iv). . . .

In conformity with the Commission's position, WEPCo's inclusion of the previously approved 2012 Wind Transfer Price is appropriate.

Addressing the 2015 Wind project, both Staff and the Mines argue that it is "premature" to set a Transfer Price. Both parties argue that the proposed Transfer Price should be considered a "placeholder" for "planning purposes".

In this proceeding, WEPCo presented limited information about its 2015 Wind project. It is safe to say, however, that the 2015 Wind project is still in the planning stage. WEPCo has indicated that it intends to seek ways to reduce the cost of this project and has indicated the possibility of replacing it. Because, of the uncertainty surrounding the 2015 Wind project, Staff's and the Mines' proposals, that the 2015 Wind Transfer Price be approved as a placeholder for

planning purposes, only, is adopted. As Staff has argued, after the details of this project are presented for consideration, the actual Transfer Price can be adopted.

2010 PPA

Currently, the 2010 PPA accounts for 13,584 RECs in 2012, 13,082 RECs in 2013, and 13,251 RECs in 2014. However, all parties agree that the 2010 PPA is not eligible for inclusion in the Plan and that conclusion is adopted. WEPCo must remove the 2010 PPA from the Plan.

Unfortunately, the evidentiary record provides no indication of how WEPCo intends to replace the 2010 PPA RECs. However, in his briefs, WEPCo's counsel suggests replacing the 2010 PPA RECs with RECS from WEPCo's Blue Sky/Green Field wind farm. Counsel adds that, if the use of Blue Sky/Green Field RECs is not approved, WEPCo will charge Michigan customers for the 2010 PPA, anyway, through base rates and PSCR factors, and impose upon Michigan customers an additional charge to cover the cost of purchasing replacement RECs. In the alternative, counsel suggests that WEPCo could sell the Michigan allocated 2010 PPA RECs and purchase the same number of RECs from a qualified source.

As the Mines point out, WEPCo has presented no evidence to establish that either of the above suggestions are reasonable. While counsel's suggestions may have merit, they are not evidence in this case and are no substitute for the presentation of relevant evidence to be tested in a contested

hearing. As mere speculative argument, unsupported by any evidence of record, they are rejected.

Reasonableness and Prudence of the Proposed REP

Unless the Plan is reasonable and prudent, it may not be approved. MCL 460.1021(6)(a). WEPCo's Plan is neither. In part, this is the result of the manner in which WEPCo presented its Plan, a presentation that changed at every step of this proceeding.

WEPCo, first, presented its proposed Plan when it filed its Application on May 26, 2011. With the Application, WEPCo filed seven pages of testimony and one exhibit, Exhibit A-1.

However, on August 9, 2011, WEPCo filed two pages of supplemental testimony and another exhibit, Exhibit A-2. In the testimony, WEPCo identifies changes to the number of 2009 existing RECs, changes to projected generation, changes to the proposed Transfer Prices, and an increase in new renewable resources. Without expressly stating so, WEPCo's Exhibit A-2 served as a replacement for Exhibit A-1.

Then, on September 23, 2011, WEPCo filed four pages of rebuttal testimony and another exhibit, Exhibit A-3. In the rebuttal testimony, WEPCo acknowledged, in response to Staff's and intervenors' filings, that its Plan does not contain unbundled RECs and added that this fact doesn't mean they won't be considered in the future. Additionally, WEPCo reasserted its policy of adhering to system-wide planning, while indicating, for the first time, that it plans to remove

the Michigan allocated portion of its 2010 PPA from the Plan. Exhibit A-3¹¹ shows some effects of removing the 2010 PPA, which includes lowering the REC percentages from 4.96% to 4.43% in 2012, from 4.53% to 4.09% in 2013, and from 4.86% to 4.33% in 2014. The revenue ramifications of the 2010 PPA's removal were not addressed.

Finally, as explained, above, in WEPCo's initial brief, counsel made alternative proposals to replace RECs that would be lost by removal of the 2010 PPA and suggested how WEPCo will recoup the cost of the PPA from Michigan rate payers¹².

The end result is that WEPCo has presented a disordered and incomplete filing and proposed REP. For instance, while acknowledging that the 2010 PPA cannot be used to meet Michigan's REC standards, WEPCo has not removed it from the Plan. Further, WEPCo's witness states that WEPCo plans to remove the 2010 PPA and replace the lost RECS. However, WEPCo fails to present any evidence to establish how it will replace the RECs and the financial ramifications that flow there from. While WEPCo presents Exhibit A-3, presumably, to show the effects of the 2010 PPA's removal, it only shows changes to part of the Plan and fails to address other aspects of the PPA's removal. Then, with the submission of briefs, WEPCo's counsel presents possible alternatives to replace the 2010 PPA's RECs; alternatives that find no support in the evidentiary record and which have not been examined under the scrutiny of this contested case. In

¹¹ Exhibit A-3 is one page in length and in the same format as page four of Exhibit A-2.

¹² As already noted, none of counsel's proposals are supported by any evidence in the record. Thus, these proposals cannot be considered part of the REP. However, counsel's arguments do highlight the incompleteness of the REP.

short, as presented, the proposed REP is incomplete and represents a work in progress. This, alone, supports a finding that the REP is not reasonable. However, this is not the REP's only shortfall.

Under the proposed REP, WEPCo's long-term plans rely entirely upon the construction of an additional self-built wind project. Staff, the Mines, and White Pine all express concerns with this approach; an approach that is, relatively, expensive and comes nowhere near meeting the 10% REC standard. Faced with this criticism, WEPCo fails to present evidence to establish that its 2015 Wind only approach is superior to other, potentially, less costly alternatives. In fact, WEPCo admits that it has not even evaluated the option of obtaining unbundled RECs and presents no evidence to rebut the Mines' evidence suggesting unbundled RECs are a viable alternative. Given WEPCo's failure to explain why its 2015 Wind project is preferable to other alternatives, such as unbundled RECs and eligible PPAs, it is not possible to determine the reasonableness and prudence of its self-built wind, only, approach.

Of greatest concern is the fact that, like in its original REP, WEPCo does not plan to meet Michigan's 10% REC standard. With removal of the 2010 PPA, WEPCo expects to achieve REC percentages of 4.09%, 4.33%, and 4.54% in 2013, 2014, and 2015, respectively. Exh A-3. According to the Commission's 2011 Report, of the 74 initial REPs approved by the Commission, only three, WEPCo's being one, did not plan to comply with the 10% RE standard.¹³

¹³ The Commission's 2011 Report identified WEPCo, the City of Sebewaing, and the Detroit Public Lighting Department as not expecting to meet the 2015 standard. In the Commission's 2012 Report, the Commission again identifies WEPCo as one of three utilities that will not meet the 2015 standards, along with the City of Eaton Rapids and Detroit Public Lighting

Exh MIN-3. In the Report, the Commission, also, states that, “the actual contract prices for renewable energy are much lower than forecasted in the 2009” and adds that the “biennial review plan cases . . . should reflect lower renewable energy prices and may even show these three electric providers are able to obtain the needed renewable energy and stay within the retail rate impact limits.”

Exh MIN-3. Unfortunately, WEPCo's Plan contains little, if anything, to improve the likelihood that WEPCo will meet the 10% RE Standard. Rather, WEPCo has stuck to a Plan that relies on relatively expensive self-built wind projects, has failed to seriously consider cheaper alternatives, and guarantees the failure to meet the 2015 standards.

At a minimum, WEPCo must consider and analyze all the resources that are available and might assist in meeting the RE standards. This, WEPCo admits, it has not done. After considering all options, WEPCo's Plan should reflect reasonable and prudent decisions aimed at meeting the RE standards, while, quite possibly, acknowledging that the standards may not be met. Instead, however, WEPCo has failed to examine its options and has presented a plan for failure, with no prospect for success. Based on the record presented, this approach is unreasonable and imprudent.

Staff's Recommendation

Staff's concerns, its arguments, and its proposal, as outlined above, are well received. It is agreed, with Staff, that WEPCo has failed to design a REP

Department. Michigan Public Service Commission, *Report On The Implementation Of The P.A. 295 Renewable Energy Standard And The Cost-Effectiveness Of The Energy Standards* (Lansing, MI, Feb 15, 2012, p 4). http://www.michigan.gov/documents/mpsc/implementation_PA295_renewable_energy2-15-2012_376924_7.pdf

that cost-effectively complies with Michigan's 10% renewable energy standards and that its Plan primarily consists of company built wind projects, outside the State of Michigan, with unjustified high costs.

Staff proposes that Plan approval be contingent upon WEPCo establishing a competitive bidding process to determine the availability of lower cost RE alternatives. This proposal is reasonable and, as Staff points out, such a process will likely result in WEPCo more fully complying with the Act and avoid additional contributions to WEPCo's excess generation capacity. WEPCo's argument that it will address efforts to reduce the cost of the 2015 Wind project in its next REP update rings a bit hollow and does nothing but delay decisions that need resolution sooner, rather than later. Therefore, Staff's recommendation that WEPCo re-file a Plan that includes a competitive bid process is adopted.

White Pine's Recommendations

In short, White Pine is asking the Commission to require WEPCo to include RE produced from White Pine's biomass facility as part of the Plan and to require WEPCo to enter into negotiations over the terms of its inclusion. However, White Pine has failed to present evidence to establish that it is reasonable and prudent to include it in the Plan. As WEPCo points out, White Pine has not established that it can provide RE at reasonable prices and that it can help WEPCo achieve higher RE compliance levels. Therefore, the record does not support conditioning Plan approval upon adoption of White Pine's proposal.

CONCLUSION

For the reasons stated above, WEPCo's proposed Renewable Energy Plan is rejected.

WEPCo shall file a new proposed Renewable Energy Plan by May 15, 2012.

Any evidence and arguments not specifically addressed in this Proposal for Decision are deemed irrelevant to the findings and conclusions of this matter.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

ISSUED AND SERVED: March 22, 2012
drr